

25. (Amended) A fluid oxygenating apparatus comprising:

a housing defining a chamber;

a core positioned within and operatively attached to the housing, the core including a manifold formed therein;

a fiber bundle positioned around the core; and

a bubble release port positioned adjacent between the fiber bundle and a top end of the ~~housing and communicating with a top end of the manifold; wherein fluid is flowed through an inlet of the manifold and out at least one opening formed in a top of the core and through the fiber bundle and through an outlet in the housing while bubbles are released through the bubble release port~~ prior to flowing through the fiber bundle.

REMARKS

Claims 1-25 are pending in the application. Claims 11-13, 23 and 24 have been withdrawn from consideration after an election of species by the applicants. Claim 1, Claims 1-10, 14-22 and 25 have been rejected. No claims have been allowed. Claims 1, 4, 10, 17 and 25 have been amended herein. Reconsideration and allowance of the application, as amended, is respectfully requested.

Claims 1-4, 7-10, 14-22 & 25 have been rejected under 35 USC 102(b) as being anticipated by White et al. (5,762,869). In response, the applicants respectfully traverse the rejection. "In order to anticipate a claim the reference must teach every element of the claim". (MPEP 2131.01) the examiner has not met this burden in rejecting applicants' claims. With respect to applicants' Claim 1, White et al. does not disclose a channel through the core as claimed in applicants' original Claim 1. Further the '869 patent does not teach an inlet and outlet end to the channel. Lastly, the '869 patent does not teach a bubble release port in communication with the outlet end of the channel. With respect to applicants' Claim 10, White fails to teach a heat exchanger operatively connected to the

channel. With respect to applicants' Claim 18, the '869 patent does not teach flowing the debubbled fluid through a plurality of fibers. With respect to applicants' Claim 25, the '869 patent does not teach a manifold in the core having an inlet. The '869 patent also fails to teach the at least one opening formed in the core where fluid is flowed prior to flowing through the bundle. The examiner has failed to make a prima facie case of anticipation as required. However, in order to advance the prosecution of the application, applicants have amended independent Claims 1, 17 and 25. Claim 1 now recites the core having a channel and a fiber bundle, the channel forming a fluid path through the core between the fluid inlet and the fiber bundle. The bubble release is disposed between the channel and the fiber bundle to release the bubbles before the fluid enters the fiber bundle. Claim 10 now recites the heat exchanger operatively connected to the channel. Claim 17 is amended to recite removing bubbles from the fluid prior to oxygenation. Claim 25 now recites the bubble release port is between the core and the fiber bundle on the flow path. This is different from the disclosure in the '869 patent. The '869 patent disclosed releasing gas coming from the fluid after the fluid has passed through the fiber bundle. Applicants' invention solves a problem not anticipated by the '869 patent created by the bubbles coming from the fluid prior to entering the fiber bundle will not pass through the bundle impeding the flow of fluid through the fiber bundle. The Claims 2- 4, 7-10 and 15-22 in the application depend from the amended independent claims and are also believed to be patentable over the art of record in the application. Therefore, reconsideration and allowance of Claims 1-4,7-10,14-22 &25, as amended, is respectfully requested.


Claims 5 and 6 have been rejected under 35 USC 103(a) as being unpatentable over White et al. (5,762,869) in view of Winters et al. (5,338,770). In response, the applicants respectfully traverse the rejection. First, as argued above, White does not disclose the applicants' invention substantially as claimed as stated in Examiner's remarks. Next, as indicated above, applicants have amended Claims 1,4,10,17 and 25 to further define applicants' invention. The remaining claims in the application depend from the amended independent claims and are also believed to be patentable over the art of record in the

application. Therefore, reconsideration and allowance of Claims 1-10,14-22 and 25, as amended, is respectfully requested.

The amendment and remarks herein are believed to place the application in condition for allowance. Reconsideration and allowance of Claims 1-10,14-22 and 25, as amended, is respectfully requested.

Respectfully submitted,

Date 4/28/04

By 
James D. Palmatier, Reg. No. 42,972
Senior Patent Attorney
Tel. 763.391.9295
Fax. 763.391.9668
Customer No.: 27581